

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1646

AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 23-2-5-3, AS AMENDED BY HEA 1198-2009, SECTION 130, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 3. (a) ~~As used in this chapter, "bona fide third party fee" includes fees for the following:~~

(1) ~~Credit reports; investigations; and appraisals performed by a person who holds a license or certificate as a real estate appraiser under IC 25-34.1-8;~~

(2) ~~If the loan is to be secured by real property; title examinations; an abstract of title; title insurance; a property survey; and similar purposes;~~

(3) ~~The services provided by a loan broker in procuring possible business for a lending institution if the fees are paid by the lending institution;~~

(b) ~~As used in this chapter, "certificate of registration" means a certificate issued by the commissioner authorizing an individual to:~~

(1) ~~engage in origination activities on behalf of a licensee; or~~

(2) ~~act as a principal manager on behalf of a licensee;~~

(c) (a) ~~As used in this chapter, "loan broker license" means a license issued by the commissioner authorizing a person to engage in the loan brokerage business.~~

(d) (b) ~~As used in this chapter, "licensee" means a person that is issued a license under this chapter.~~

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~~(c)~~ (c) As used in this chapter, "loan broker" means any person who, in return for any consideration from any source procures, attempts to procure, or assists in procuring, a **residential mortgage** loan from a third party or any other person, whether or not the person seeking the loan actually obtains the loan. "Loan broker" does not include:

- (1) any supervised financial organization (as defined in IC 24-4.5-1-301(20)), including a bank, savings bank, trust company, savings association, or credit union;
- (2) any other financial institution that is:
 - (A) regulated by any agency of the United States or any state; and
 - (B) regularly actively engaged in the business of making consumer loans that are not secured by real estate or taking assignment of consumer sales contracts that are not secured by real estate;
- (3) any insurance company;
- (4) any person arranging financing for the sale of the person's product; or
- (5) a creditor that is licensed under IC 24-4.4-2-402.

~~(d)~~ (d) As used in this chapter, "loan brokerage business" means a person acting as a loan broker.

~~(e)~~ (e) As used in this chapter, "**mortgage loan** origination activities" means ~~communication with or assistance of a borrower or prospective borrower in the selection of loan products or terms;~~ **performing any of the following activities for compensation or gain in connection with a residential mortgage loan:**

- (1) **Receiving or recording a borrower's or potential borrower's residential mortgage loan application information in any form for use in a credit decision by a creditor.**
- (2) **Offering to negotiate or negotiating terms of a residential mortgage loan.**

(f) As used in this chapter, "**borrower's residential mortgage loan application information**" means the address of the proposed residential real property to be mortgaged and borrower's essential personal and financial information necessary for an informed credit decision to be made on the borrower's mortgage loan application.

~~(g)~~ (g) As used in this chapter, "**mortgage loan** originator" means ~~a person~~ **an individual** engaged in **mortgage loan** origination activities. The term "~~originator~~" does not include a person who: performs origination activities for any entity that is not a loan broker under subsection (c).

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(1) performs purely administrative or clerical tasks on behalf of a mortgage loan originator or acts as a loan processor or underwriter;

(2) performs only real estate brokerage activities and is licensed in accordance with IC 25-34.1 or the applicable laws of another state, unless the person is compensated by a creditor, a loan broker, a mortgage loan originator, or any agent of a creditor, a loan broker, or a mortgage loan originator; or

(3) is involved only in extensions of credit relating to time share plans (as defined in 11 U.S.C. 101(53D)).

(h) As used in this chapter, "mortgage loan originator license" means a license issued by the commissioner authorizing an individual to act as a mortgage loan originator on behalf of a loan broker licensee.

(i) As used in this chapter, "person" means an individual, a partnership, a trust, a corporation, a limited liability company, a limited liability partnership, a sole proprietorship, a joint venture, a joint stock company, or another group or entity, however organized.

(j) As used in this chapter, "registrant" means an individual who is registered:

(1) to engage in origination activities under this chapter; or

(2) as a principal manager.

(k) As used in this chapter, "ultimate equitable owner" means a person who, directly or indirectly, owns or controls ten percent (10%) or more of the equity interest in a loan broker licensed or required to be licensed under this chapter, regardless of whether the person owns or controls the equity interest through one (1) or more other persons or one (1) or more proxies, powers of attorney, or variances.

(l) As used in this chapter, "principal manager" means an individual who:

(1) has at least three (3) years of experience:

(A) as a ~~loan broker~~; **mortgage loan originator**; or

(B) in financial services;

that is acceptable to the commissioner; and

(2) is principally responsible for the supervision and management of the employees and business affairs of a **loan broker** licensee.

(m) As used in this chapter, "principal manager license" means a license issued by the commissioner authorizing an individual to act as:

(1) a principal manager; and

(2) a mortgage loan originator;

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on behalf of a loan broker licensee.

(m) As used in this chapter, "bona fide third party fee", with respect to a residential mortgage loan, includes any of the following:

- (1) Fees for real estate appraisals. However, if the residential mortgage loan is governed by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (12 U.S.C. 3331 through 3352), the fee for an appraisal performed in connection with the loan is not a bona fide third party fee unless the appraisal is performed by a person that is licensed or certified under IC 25-34.1-3-8.
- (2) Fees for title examination, abstract of title, title insurance, property surveys, or similar purposes.
- (3) Notary and credit report fees.
- (4) Fees for the services provided by a loan broker in procuring possible business for a creditor if the fees are paid by the creditor.

(n) As used in this chapter, "branch office" means any fixed physical location from which a loan broker licensee holds itself out as engaging in the loan brokerage business.

(o) As used in this chapter, "loan processor or underwriter" means an individual who:

- (1) is employed by a loan broker licensee and acts at the direction of, and subject to the supervision of, the loan broker licensee or a licensed principal manager employed by the loan broker licensee; and
- (2) performs solely clerical or support duties on behalf of the loan broker licensee, including any of the following activities with respect to a residential mortgage loan application received by the loan broker licensee:

(A) The receipt, collection, distribution, and analysis of information commonly used in the processing or underwriting of a residential mortgage loan.

(B) Communicating with a borrower or potential borrower to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that the communication does not include:

- (i) offering or negotiating loan rates or terms; or
- (ii) counseling borrowers or potential borrowers about residential mortgage loan rates or terms.

(p) As used in this chapter, "real estate brokerage activity" means any activity that involves offering or providing real estate

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brokerage services to the public, including any of the following:

- (1) Acting as a real estate broker or salesperson for a buyer, seller, lessor, or lessee of real property.
- (2) Bringing together parties interested in the sale, lease, or exchange of real property.
- (3) Negotiating, on behalf of any party, any part of a contract concerning the sale, lease, or exchange of real property, other than in connection with obtaining or providing financing for the transaction.
- (4) Engaging in any activity for which the person performing the activity is required to be licensed under IC 25-34.1 or the applicable laws of another state.
- (5) Offering to engage in any activity, or to act in any capacity with respect to any activity, described in subdivisions (1) through (4).

(q) As used in this chapter, "registered mortgage loan originator" means a mortgage loan originator who:

- (1) is an employee of:
 - (A) a depository institution;
 - (B) a subsidiary that is:
 - (i) owned and controlled by a depository institution; and
 - (ii) regulated by a federal financial institution regulatory agency (as defined in 12 U.S.C. 3350(6)); or
 - (C) an institution regulated by the Farm Credit Administration; and
- (2) is registered with and maintains a unique identifier with the Nationwide Mortgage Licensing System and Registry.

(r) As used in this chapter, "residential mortgage loan" means a loan that is secured by a mortgage, deed of trust, or other consensual security interest on real estate in Indiana on which there is located or intended to be constructed a dwelling (as defined in the federal Truth in Lending Act (15 U.S.C. 1602(v)) that is or will be used primarily for personal, family, or household purposes.

~~(m)~~ (s) As used in this chapter, "personal information" includes any of the following:

- (1) An individual's first and last names or first initial and last name.
- (2) Any of the following data elements:
 - (A) A Social Security number.
 - (B) A driver's license number.
 - (C) A state identification card number.
 - (D) A credit card number.

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(E) A financial account number or debit card number in combination with a security code, password, or access code that would permit access to the person's account.

(3) With respect to an individual, any of the following:

(A) Address.

(B) Telephone number.

(C) Information concerning the individual's:

(i) income or other compensation;

(ii) credit history;

(iii) credit score;

(iv) assets;

(v) liabilities; or

(vi) employment history.

~~(n)~~ (t) As used in this chapter, personal information is "encrypted" if the personal information:

(1) has been transformed through the use of an algorithmic process into a form in which there is a low probability of assigning meaning without use of a confidential process or key; or

(2) is secured by another method that renders the personal information unreadable or unusable.

~~(o)~~ (u) As used in this chapter, personal information is "redacted" if the personal information has been altered or truncated so that not more than the last four (4) digits of:

(1) a Social Security number;

(2) a driver's license number;

(3) a state identification number; or

(4) an account number;

are accessible as part of the personal information.

(v) As used in this chapter, "depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

(w) As used in this chapter, "state licensed mortgage loan originator" means any individual who:

(1) is a mortgage loan originator;

(2) is not an employee of:

(A) a depository institution;

(B) a subsidiary that is:

(i) owned and controlled by a depository institution; and

(ii) regulated by a federal financial institution regulatory agency (as defined in 12 U.S.C. 3350(6)); or

(C) an institution regulated by the Farm Credit

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Administration;

(3) is licensed by a state or by the Secretary of the United States Department of Housing and Urban Development under Section 1508 of the S.A.F.E. Mortgage Licensing Act of 2008 (Title V of P.L.110-289); and

(4) is registered as a mortgage loan originator with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(x) As used in this chapter, "unique identifier" means a number or other identifier that:

(1) permanently identifies a mortgage loan originator; and

(2) is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the federal financial institution regulatory agencies to facilitate:

(A) the electronic tracking of mortgage loan originators; and

(B) the uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against mortgage loan originators.

SECTION 2. IC 23-2-5-4, AS AMENDED BY P.L.145-2008, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 4. (a) A person may not engage in the loan brokerage business in Indiana unless the person first obtains a **loan broker** license from the commissioner. Any person desiring to engage or continue in the loan brokerage business shall apply to the commissioner for a **loan broker** license under this chapter.

(b) An individual may not ~~perform origination activities act as a mortgage loan originator~~ in Indiana on behalf of a person licensed or required to be licensed **as a loan broker** under this chapter unless the individual first obtains a ~~certificate of registration~~ **unique identifier from the Nationwide Mortgage Licensing System and Registry and a mortgage loan originator license** from the commissioner. An individual desiring to ~~engage in origination activities act as a mortgage loan originator~~ on behalf of a person licensed or required to be licensed **as a loan broker** under this chapter shall apply to the commissioner for ~~registration~~ **a mortgage loan originator license** under this chapter.

(c) An individual may not act as a principal manager on behalf of a person licensed or required to be licensed **as a loan broker** under this chapter unless the individual first obtains a ~~certificate of registration~~ **unique identifier from the Nationwide Mortgage Licensing System**

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and Registry and a principal manager license from the commissioner. Any individual desiring to act as a principal manager on behalf of a person licensed or required to be licensed **as a loan broker** under this chapter shall apply to the commissioner for ~~registration a~~ **principal manager license** under this chapter.

(d) The commissioner may request evidence of compliance with this section at any of the following times:

- (1) The time of application for an initial ~~(A) license. or (B) certificate of registration.~~
- (2) The time of renewal of a license. ~~or certificate of registration.~~
- (3) Any other time considered necessary by the commissioner.

(e) For purposes of subsection (d), evidence of compliance with this section must include a criminal background check, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation.

(f) **A unique identifier obtained by an individual from the Nationwide Mortgage Licensing System and Registry under subsection (b) or (c) may not be used for purposes other than those set forth in the S.A.F.E. Mortgage Licensing Act of 2008 (Title V of P.L.110-289).**

SECTION 3. IC 23-2-5-5, AS AMENDED BY P.L.145-2008, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 5. (a) An application for **a loan broker** license or renewal of a **loan broker** license must contain:

- (1) consent to service of process under subsection ~~(h);~~ (g);
- (2) evidence of the bond required in subsection ~~(e);~~ (d);
- (3) an application fee of ~~four two~~ **two** hundred dollars ~~(\$400); (\$200),~~ plus ~~two one~~ **one** hundred dollars ~~(\$200) (\$100)~~ for each ultimate equitable owner;
- (4) an affidavit affirming that none of the applicant's ultimate equitable owners, directors, managers, or officers have been convicted, in any jurisdiction, of:
 - (A) **any felony within the previous seven (7) years; or**
 - (B) **an offense involving fraud or deception that is punishable by at least one (1) year of imprisonment;**
 unless **such an affidavit is** waived by the commissioner under subsection ~~(i);~~ (h);
- (5) evidence that the applicant, if the applicant is an individual, has completed the education requirements under section 21 of this chapter;
- (6) the name and ~~registration~~ **license** number for each **mortgage loan** originator to be employed by the licensee;

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(7) the name and ~~registration~~ **license** number for each principal manager; and

(8) for each ultimate equitable owner, the following information:

(A) The name of the ultimate equitable owner.

(B) The address of the ultimate equitable owner, including the home address of the ultimate equitable owner if the ultimate equitable owner is an individual.

(C) The telephone number of the ultimate equitable owner, including the home telephone number if the ultimate equitable owner is an individual.

(D) The ultimate equitable owner's Social Security number and date of birth, if the ultimate equitable owner is an individual.

(b) An application for ~~registration~~ **licensure** as ~~an~~ **a mortgage loan** originator shall be made on a ~~registration~~ form prescribed by the commissioner. The application must include the following information for the individual that seeks to be ~~registered~~ **licensed** as ~~an~~ **a mortgage loan** originator:

(1) The name of the individual.

(2) The home address of the individual.

(3) The home telephone number of the individual.

(4) The individual's Social Security number and date of birth.

(5) The name of the:

(A) **loan broker** licensee; or

(B) applicant for **loan broker** licensure;

for whom the individual seeks to be employed as ~~an~~ **a mortgage loan** originator.

(6) Consent to service of process under subsection ~~(h)~~: **(g)**.

(7) Evidence that the individual has completed the education requirements described in section 21 of this chapter.

(8) An application fee of ~~one hundred fifty~~ dollars ~~(\$100)~~: **(\$50)**.

(9) All:

(A) registration numbers previously issued to the individual under this chapter, if the applicant was registered as an originator or a principal manager under this chapter before July 1, 2009; and

(B) license numbers previously issued to the individual under this chapter, if applicable.

(c) An application for ~~registration~~ **licensure** as a principal manager shall be made on a ~~registration~~ form prescribed by the commissioner. The application must include the following information for the individual who seeks to be ~~registered~~ **licensed** as a principal manager:

(1) The name of the individual.

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- (2) The home address of the individual.
- (3) The home telephone number of the individual.
- (4) The individual's Social Security number and date of birth.
- (5) The name of the:
 - (A) **loan broker** licensee; or
 - (B) applicant for **loan broker** licensure;
 for whom the individual seeks to be employed as a principal manager.
- (6) Consent to service of process under subsection ~~(h)~~: **(g)**.
- (7) Evidence that the individual has completed the education requirements described in section 21 of this chapter.
- (8) Evidence that the individual has at least three (3) years of experience in the:
 - (A) loan brokerage; or
 - (B) financial services;
 business.
- (9) An application fee of ~~two one~~ hundred dollars ~~(\$200)~~: **(\$100)**.
- (10) All:
 - (A) registration numbers previously issued to the individual **under this chapter, if the applicant was registered as an originator or a principal manager under this chapter before July 1, 2009; and**
 - (B) license numbers previously issued to the individual **under this chapter, if applicable.**
- ~~(d)~~ The commissioner shall require an applicant for registration as:
 - (1) an originator under subsection (b); or
 - (2) a principal manager under subsection (c);
 to pass a written examination prepared and administered by the commissioner or an agent appointed by the commissioner.
- ~~(e)~~ **(d)** A **loan broker** licensee must maintain a bond satisfactory to the commissioner, **which must cover the activities of each licensed mortgage loan originator and licensed principal manager employed by the loan broker licensee. The bond must be in one (1) of the amount of: following amounts, depending on the total amount of residential mortgage loans originated by the loan broker in the previous calendar year:**
 - (1) Fifty thousand dollars (\$50,000) ~~which if the total amount of residential mortgage loans originated by the loan broker in the previous calendar year was not greater than five million dollars (\$5,000,000).~~
 - (2) Sixty thousand dollars (\$60,000) if the total amount of residential mortgage loans originated by the loan broker in

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the previous calendar year was greater than five million dollars (\$5,000,000) but not greater than twenty million dollars (\$20,000,000).

(3) Seventy-five thousand dollars (\$75,000) if the total amount of residential mortgage loans originated by the loan broker in the previous calendar year was greater than twenty million dollars (\$20,000,000).

The bond shall be in favor of the state and shall secure payment of damages to any person aggrieved by any violation of this chapter by the licensee or any licensed mortgage loan originator or licensed principal manager employed by the licensee.

~~(f)~~ (e) The commissioner shall issue a license and license number to an applicant ~~that for a loan broker license, a mortgage loan originator license, or a principal manager license if the applicant meets the applicable licensure requirements of set forth in this chapter. Whenever the registration provisions of this chapter have been complied with, the commissioner shall issue a certificate of registration and registration number authorizing the registrant to:~~

~~(1) engage in origination activities; or~~

~~(2) act as a principal manager;~~

~~whichever applies.~~

~~(g)~~ (f) Licenses and initial certificates of registration issued by the commissioner are valid until January 1 of under this chapter expire on December 31 of the second year after issuance; in which they are issued.

~~(h)~~ (g) Every applicant for licensure or registration or for renewal of a license or a registration shall file with the commissioner, in such form as the commissioner by rule or order prescribes, an irrevocable consent appointing the secretary of state to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant arising from the violation of any provision of this chapter. Service shall be made in accordance with the Indiana Rules of Trial Procedure.

~~(i)~~ (h) Upon good cause shown, the commissioner may waive the requirements of subsection (a)(4) for one (1) or more of an applicant's ultimate equitable owners, directors, managers, or officers.

~~(j)~~ (i) Whenever an initial or a renewal application for a license or registration is denied or withdrawn, the commissioner shall retain the initial or renewal application fee paid.

~~(k)~~ (j) At the time of application for an initial license under this chapter, the commissioner shall require each:

(1) equitable owner, in the case of an applicant for a loan

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broker license;

(2) individual described in subsection (a)(4), **in the case of an applicant for a loan broker license;** and

(3) applicant for ~~registration~~ **licensure** as:

(A) ~~an~~ **a mortgage loan** originator; or

(B) a principal manager;

to submit fingerprints for a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for use by the commissioner in determining whether the equitable owner, the individual described in subsection (a)(4), or the applicant should be denied licensure ~~or registration~~ under this chapter for any reason set forth in section 10(c) **or 10(d)** of this chapter. The equitable owner, individual described in subsection (a)(4), or applicant shall pay any fees or costs associated with the fingerprints and background check required under this subsection. The commissioner may not release the results of a background check described in this subsection to any private entity.

(k) Every three (3) years, beginning with the third calendar year following the calendar year in which an initial license is issued under this chapter, the commissioner shall require each:

(1) equitable owner, in the case of a loan broker licensee;

(2) individual described in subsection (a)(4), in the case of a loan broker licensee; and

(3) licensed:

(A) mortgage loan originator; or

(B) principal manager;

to submit fingerprints for a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for use by the commissioner in determining whether the equitable owner, the individual described in subsection (a)(4), or the licensee should be denied continued licensure under this chapter for any reason set forth in section 10(c) of this chapter. The equitable owner, individual described in subsection (a)(4), or licensee shall pay any fees or costs associated with the fingerprints and background check required under this subsection. The commissioner may not release the results of a background check described in this subsection to any private entity.

(l) The commissioner shall require each applicant for licensure as:

(1) a mortgage loan originator; or

(2) a principal manager;

to submit written authorization for the commissioner or an agent

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of the commissioner to obtain a consumer report (as defined in IC 24-5-24-2) concerning the applicant.

(m) In reviewing a consumer report obtained under subsection (l), the commissioner may consider one (1) or more of the following in determining whether an individual described in subsection (l) has demonstrated financial responsibility:

- (1) Bankruptcies filed by the individual within the most recent ten (10) years.
- (2) Current outstanding civil judgments against the individual, except judgments resulting solely from medical expenses owed by the individual.
- (3) Current outstanding tax liens or other government liens or filings.
- (4) Foreclosure actions filed within the most recent three (3) years against property owned by the individual.
- (5) Any pattern of seriously delinquent accounts associated with the individual during the most recent three (3) years.

SECTION 4. IC 23-2-5-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 5.5. (a) The commissioner shall require an applicant for licensure as:**

- (1) a mortgage loan originator under section 5(b) of this chapter; or
 - (2) a principal manager under section 5(c) of this chapter;
- to pass a written examination prepared and administered by the commissioner or an agent appointed by the commissioner and approved by the Nationwide Mortgage Licensing System and Registry.

(b) The written examination required by this section must measure the applicant's knowledge and comprehension in appropriate subject areas, including the following:

- (1) Ethics.
- (2) Federal laws and regulations concerning the origination of residential mortgage loans.
- (3) State laws and rules concerning the origination of residential mortgage loans.

(c) An individual who answers at least seventy-five percent (75%) of the questions on the written examination correctly is considered to have passed the examination.

(d) An individual who does not pass the written examination may retake the examination up to two (2) additional times, with each subsequent attempt occurring at least thirty (30) days after

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the individual last sat for the examination. If an individual fails three (3) consecutive examinations, the individual must wait to retake the examination until at least six (6) months after the individual sat for the third examination.

(e) If an individual who has been issued a mortgage loan originator license or a principal manager license under this chapter:

- (1) allows the individual's license to lapse; or
- (2) otherwise does not maintain a valid license under this chapter;

for a period of at least five (5) years, the individual must retake the written examination required by this section.

SECTION 5. IC 23-2-5-6, AS AMENDED BY P.L.145-2008, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 6. A **loan broker** licensee may not continue engaging in the loan brokerage business unless the licensee's license is renewed ~~biennially~~: **annually**. A ~~registrant mortgage loan originator licensee or a principal manager licensee~~ may not continue acting as:

- (1) ~~engaging in origination activities; a mortgage loan originator; or~~
- (2) ~~acting as a principal manager;~~

unless the ~~registrant's certificate of registration~~ **licensee's license** is renewed ~~biennially~~: **annually**. A licensee **under this chapter** shall renew its license by filing with the commissioner, at least thirty (30) days before the expiration of the license, an application containing any information the commissioner may require to indicate any material change from the information contained in the applicant's original application or any previous application. ~~A registrant may renew the registrant's certificate of registration by filing with the commissioner; at least thirty (30) days before the expiration of the registration; an application containing any information the commissioner may require to indicate any material change from the information contained in the applicant's original application or any previous application.~~

SECTION 6. IC 23-2-5-7, AS AMENDED BY P.L.27-2007, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 7. (a) The loan broker regulation account is created in the state general fund. The money in the loan broker regulation account may be used only for the regulation of loan brokers, **mortgage loan originators, and principal managers** under this chapter. The loan broker regulation account shall be administered by the treasurer of state. The money in the loan broker regulation account does not revert to any other account within the state general fund at the

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end of a state fiscal year.

(b) Except as provided in subsection (c), all fees and funds accruing from the administration of this chapter shall be accounted for by the commissioner and shall be deposited with the treasurer of state who shall deposit them in the loan broker regulation account in the state general fund.

(c) All expenses incurred in the administration of this chapter shall be paid from appropriations made from the state general fund. However, costs of investigations **incurred under this chapter shall be paid from**, and civil penalties recovered under this chapter shall be deposited in, the securities division enforcement account created under IC 23-19-6-1(f). The funds in the securities division enforcement account shall be available, with the approval of the budget agency, to augment and supplement the funds appropriated for the administration of this chapter.

SECTION 7. IC 23-2-5-9.1, AS ADDED BY P.L.230-2007, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 9.1. (a) As used in this section, "appraisal company" means a **person business entity** that: ~~employs or retains the services of one (1) or more real estate appraisers:~~

- (1) performs real estate appraisals on a regular basis for compensation through one (1) or more owners, officers, employees, or agents; or**
- (2) holds itself out to the public as performing real estate appraisals.**

(b) As used in this section, "immediate family", with respect to an individual, refers to:

- (1) the individual's spouse who resides in the individual's household; and
- (2) any dependent child of the individual.

(c) As used in this section, "real estate appraiser" means a person who:

- (1) is licensed as a real estate broker under IC 25-34.1 and performs real estate appraisals within the scope of the person's license; ~~or~~
- (2) holds a real estate appraiser license or certificate issued under ~~IC 25-34.1-8.~~ **IC 25-34.1-3-8; or**
- (3) otherwise performs real estate appraisals in Indiana.**

(d) A person licensed ~~or registered~~ under this chapter, or a person required to be licensed ~~or registered~~ under this chapter, shall not knowingly bribe, coerce, or intimidate another person to corrupt or improperly influence the independent judgment of a real estate

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appraiser with respect to the value of any real estate offered as security for a **residential** mortgage loan.

(e) Except as provided in subsection (f): ~~after June 30, 2007:~~

- (1) a person licensed ~~or registered~~ under this chapter, or a person required to be licensed ~~or registered~~ under this chapter;
- (2) a member of the immediate family of:
 - (A) a person licensed ~~or registered~~ under this chapter; or
 - (B) a person required to be licensed ~~or registered~~ under this chapter; or
- (3) a person described in subdivision (1) or (2) in combination with one (1) or more other persons described in subdivision (1) or (2);

may not own or control a majority interest in an appraisal company.

(f) This subsection applies to a person or combination of persons described in subsection (e) who own or control a majority interest in an appraisal company on June 30, 2007. The prohibition set forth in subsection (e) does not apply to a person or combination of persons described in this subsection, subject to the following:

- (1) The interest in the appraisal company owned or controlled by the person or combination of persons described in subsection (e) shall not be increased after June 30, 2007.
- (2) The interest of a person licensed ~~or registered~~ under this chapter, or of a person required to be licensed ~~or registered~~ under this chapter, shall not be transferred to a member of the person's immediate family.
- (3) If the commissioner determines that any person or combination of persons described in subsection (e) has violated this chapter, the commissioner may order one (1) or more of the persons to divest their interest in the appraisal company. The commissioner may exercise the remedy provided by this subdivision in addition to, or as a substitute for, any other remedy available to the commissioner under this chapter.

SECTION 8. IC 23-2-5-10, AS AMENDED BY P.L.145-2008, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 10. (a) Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or a practice constituting a violation of this chapter or a rule or an order under this chapter, the commissioner may investigate and may issue, with a prior hearing if there exists no substantial threat of immediate irreparable harm or without a prior hearing, if there exists a substantial threat of immediate irreparable harm, orders and notices as the commissioner determines to be in the public interest, including

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cease and desist orders, orders to show cause, and notices. After notice and hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or order under this chapter.

(b) Upon the issuance of an order or notice without a prior hearing by the commissioner under subsection (a), the commissioner shall promptly notify the respondent and, if the subject of the order or notice is a ~~registrant~~, **mortgage loan originator licensee or a principal manager licensee**, the **loan broker** licensee for whom the ~~registrant~~ **mortgage loan originator or principal manager** is employed:

- (1) that the order or notice has been issued;
- (2) of the reasons the order or notice has been issued; and
- (3) that upon the receipt of a written request the matter will be set ~~down~~ for a hearing to commence ~~within~~ **not later than fifteen (15) business days after receipt of the request if the original order issued by the commissioner was a summary suspension, summary revocation, or denial of a license and not later than forty-five (45) business days after receipt of the request for all other orders** unless the respondent consents to a later date.

If a hearing is not requested and not ordered by the commissioner, an order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing, may modify or vacate the order or extend it until final determination.

(c) The commissioner may deny an application for an initial or a renewal license, ~~or registration~~, and may suspend or revoke the license of a licensee ~~or the registration of a registrant~~ if the applicant, the licensee, ~~the registrant~~, or an ultimate equitable owner of an applicant **for a loan broker license** or of a **loan broker** licensee:

- ~~(1)~~ **(1)** fails to maintain the bond required under section 5 of this chapter;
- ~~(2)~~ **(1)** has, within the most recent ten (10) years:
 - (A) been the subject of an adjudication or a determination by:
 - (i) a court with jurisdiction; or
 - (ii) an agency or administrator that regulates securities, commodities, banking, financial services, insurance, real estate, or the real estate appraisal industry; in Indiana or in any other jurisdiction; and
 - (B) been found, after notice and opportunity for hearing, to have violated the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal laws of

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Indiana or any other jurisdiction;

~~(3)~~ **(2) except as provided in subsection (d)(1) with respect to the loan brokerage business, has:**

(A) been denied the right to do business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry; or

(B) had the person's authority to do business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry revoked or suspended; by Indiana or by any other state, federal, or foreign governmental agency or self regulatory organization;

~~(4)~~ **(3) is insolvent;**

~~(5)~~ **(4) has violated any provision of this chapter;**

~~(6)~~ **(5) has knowingly filed with the commissioner any document or statement that:**

(A) contains a false representation of a material fact;

(B) fails to state a material fact; or

(C) contains a representation that becomes false after the filing but during the term of a license ~~or certificate of registration~~ as provided in subsection ~~(i)~~; **(j)**;

~~(7)~~ **(6) has ~~(A)~~ been convicted, within ten (10) years before the date of the application, renewal, or review, of any crime, other than a felony, involving fraud or deceit; or ~~(B)~~ had a felony conviction (as defined in IC 35-50-2-1(b)) within five (5) years before the date of the application, renewal, or review;**

~~(8)~~ **(7) if the person is a loan broker licensee or a principal manager, has failed to reasonably supervise the person's mortgage loan originators or employees to ensure their compliance with this chapter;**

~~(9)~~ **(8) is on the most recent tax warrant list supplied to the commissioner by the department of state revenue; or**

~~(10)~~ **(9) has engaged in dishonest or unethical practices in the loan broker brokerage business, as determined by the commissioner.**

(d) The commissioner shall deny an application for an initial or a renewal license and shall revoke the license of a licensee if the applicant, the licensee, or an ultimate equitable owner of an applicant for a loan broker license or of a loan broker licensee:

(1) has had a:

(A) loan broker license issued under this chapter;

(B) mortgage loan originator license issued under this chapter;

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(C) principal manager license issued under this chapter; or

(D) license that is:

(i) equivalent to a license described in clause (A), (B), or (C); and

(ii) issued by another jurisdiction;

revoked by the commissioner or the appropriate regulatory agency in another jurisdiction, whichever applies;

(2) has been convicted of or pleaded guilty or nolo contendere to a felony in a domestic, foreign, or military court:

(A) during the seven (7) year period immediately preceding the date of the application or review; or

(B) at any time preceding the date of the application or review if the felony involved an act of fraud or dishonesty, a breach of trust, or money laundering;

(3) fails to maintain the bond required under section 5(d) of this chapter;

(4) fails to demonstrate the financial responsibility, character, and general fitness necessary to:

(A) command the confidence of the community in which the applicant or licensee engages or will engage in the loan brokerage business; and

(B) warrant a determination by the commissioner that the applicant or licensee will operate honestly, fairly, and efficiently within the purposes of this chapter;

(5) has failed to meet the education requirements set forth in section 21 of this chapter;

(6) has failed to pass the written examination required by section 5.5 of this chapter; or

(7) fails to:

(A) keep or maintain records in accordance with section 18 of this chapter; or

(B) allow the commissioner or an agent appointed by the commissioner to inspect or examine a loan broker licensee's books and records to determine compliance with section 18 of this chapter.

~~(d)~~ (e) The commissioner may do either of the following:

(1) Censure:

(A) a licensee;

(B) an officer, a director, or an ultimate equitable owner of a loan broker licensee; or

~~(C)~~ a registrant; or

~~(D)~~ (C) any other person;

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who violates or causes a violation of this chapter.

(2) Permanently bar any person described in subdivision (1) from being:

(A) licensed ~~or registered~~ under this chapter; or

(B) employed by or affiliated with a person licensed ~~or registered~~ under this chapter;

if the person violates or causes a violation of this chapter.

~~(e)~~ (f) The commissioner may not enter a final order:

(1) denying, suspending, or revoking the license of **an applicant or a licensee; or the registration of a registrant**; or

(2) imposing other sanctions;

without prior notice to all interested parties, opportunity for a hearing, and written findings of fact and conclusions of law. However, the commissioner may by summary order deny, suspend, or revoke a license ~~or certificate of registration~~ pending final determination of any proceeding under this section or before any proceeding is initiated under this section. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that the summary order has been entered, of the reasons for the summary order, and that upon receipt by the commissioner of a written request from a party, the matter will be set for hearing to commence ~~within fifteen~~ **(15) not later than forty-five (45)** business days after receipt of the request. If no hearing is requested and none is ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of the hearing has been given to all interested persons and the hearing has been held, may modify or vacate the order or extend it until final determination.

~~(f)~~ (g) IC 4-21.5 does not apply to a proceeding under this section.

~~(g)~~ (h) If a **registrant mortgage loan originator licensee or a principal manager licensee** seeks to transfer the ~~registrant's registration licensee's license~~ to another **loan broker licensee** who desires to have the ~~registrant engage in origination activities~~ **mortgage loan originator licensee or principal manager licensee act as a mortgage loan originator** or serve as a principal manager, whichever applies, the ~~registrant mortgage loan originator licensee or principal manager licensee~~ shall, before the ~~registrant conducts origination activities~~ **mortgage loan originator licensee or principal manager licensee acts as a mortgage loan originator** or ~~serves~~ as a principal manager for the new employer, submit to the commissioner, on a form prescribed by the commissioner, a ~~registration license~~ application, as required by section 5 of this chapter.

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~~(h)~~ (i) If the employment of a ~~registrant mortgage loan originator licensee or principal manager licensee~~ is terminated, whether:

- (1) voluntarily by the ~~registrant; mortgage loan originator licensee or principal manager licensee~~; or
- (2) by the **loan broker** licensee employing the ~~registrant; mortgage loan originator licensee or principal manager licensee~~;

the **loan broker** licensee that employed the ~~registrant mortgage loan originator licensee or principal manager licensee~~ shall, not later than five (5) days after the termination, notify the commissioner of the termination and the reasons for the termination.

~~(i)~~ (j) If a material fact or statement included in an application under this chapter changes after the application has been submitted, the applicant shall provide written notice to the commissioner of the change. The commissioner may **deny**, revoke, or refuse to renew ~~the a~~ license ~~or registration of applied for or held by~~ any person who:

- (1) is required to submit a written notice under this subsection and fails to provide the required notice within two (2) business days after the person discovers or should have discovered the change; or
- (2) would not qualify for licensure ~~or registration~~ under this chapter as a result of the change in a material fact or statement.

SECTION 9. IC 23-2-5-11, AS AMENDED BY P.L.145-2008, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 11. (a) The commissioner may do the following:

- (1) Adopt rules under IC 4-22-2 to implement this chapter.
- (2) Make investigations and examinations:
 - (A) in connection with any application for licensure ~~or for registration of a licensee or registrant under this chapter~~ or with any license ~~or certificate of registration~~ already granted; or
 - (B) whenever it appears to the commissioner, upon the basis of a complaint or information, that reasonable grounds exist for the belief that an investigation or examination is necessary or advisable for the more complete protection of the interests of the public.
- (3) Charge as costs of investigation or examination all reasonable expenses, including a per diem prorated upon the salary of the commissioner or employee and actual traveling and hotel expenses. All reasonable expenses are to be paid by the party or parties under investigation or examination if the party has violated

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this chapter.

- (4) Issue notices and orders, including cease and desist notices and orders, after making an investigation or examination under subdivision (2). The commissioner may also bring an action on behalf of the state to enjoin a person from violating this chapter. The commissioner shall notify the person that an order or notice has been issued, the reasons for it, and that a hearing will be set **within not later than fifteen (15) business days after the commissioner receives a written request from the person requesting a hearing if the original order issued by the commissioner was a summary suspension, summary revocation, or denial of a license and not later than forty-five (45) business days after the commissioner receives a written request from the person requesting a hearing for all other orders.**
- (5) Sign all orders, official certifications, documents, or papers issued under this chapter or delegate the authority to sign any of those items to a deputy.
- (6) Hold and conduct hearings.
- (7) Hear evidence.
- (8) Conduct inquiries with or without hearings.
- (9) Receive reports of investigators or other officers or employees of the state of Indiana or of any municipal corporation or governmental subdivision within the state.
- (10) Administer oaths, or cause them to be administered.
- (11) Subpoena witnesses, and compel them to attend and testify.
- (12) Compel the production of books, records, and other documents.
- (13) Order depositions to be taken of any witness residing within or without the state. The depositions shall be taken in the manner prescribed by law for depositions in civil actions and made returnable to the commissioner.
- (14) Order that each witness appearing under the commissioner's order to testify before the commissioner shall receive the fees and mileage allowances provided for witnesses in civil cases.
- (15) Provide interpretive opinions or issue determinations that the commissioner will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. The commissioner may adopt rules to establish fees for individuals requesting an interpretive opinion or a determination under this subdivision. A person may not request an interpretive opinion or a determination concerning an

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activity that:

(A) occurred before; or

(B) is occurring on;

the date the opinion or determination is requested.

(16) Subject to subsection (f), designate a multistate automated licensing system and repository, established and operated by a third party, to serve as the sole entity responsible for:

(A) processing applications for:

(i) licenses ~~and certificates of registration~~ under this chapter; and

(ii) renewals of licenses ~~and certificates of registration~~ under this chapter; and

(B) performing other services that the commissioner determines are necessary for the orderly administration of the division's licensing ~~and registration~~ system.

A multistate automated licensing system and repository described in this subdivision may include the ~~National~~ **Nationwide** Mortgage Licensing System **and Registry** established by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The commissioner may take any action necessary to allow the division to participate in a multistate automated licensing system and repository.

(b) If a witness, in any hearing, inquiry, or investigation conducted under this chapter, refuses to answer any question or produce any item, the commissioner may file a written petition with the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted requesting a hearing on the refusal. The court shall hold a hearing to determine if the witness may refuse to answer the question or produce the item. If the court determines that the witness, based upon the witness's privilege against self-incrimination, may properly refuse to answer or produce an item, the commissioner may make a written request that the court grant use immunity to the witness. Upon written request of the commissioner, the court shall grant use immunity to a witness. The court shall instruct the witness, by written order or in open court, that:

(1) any evidence the witness gives, or evidence derived from that evidence, may not be used in any criminal proceedings against that witness, unless the evidence is volunteered by the witness or is not responsive to a question; and

(2) the witness must answer the questions asked and produce the items requested.

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A grant of use immunity does not prohibit evidence that the witness gives in a hearing, investigation, or inquiry from being used in a prosecution for perjury under IC 35-44-2-1. If a witness refuses to give the evidence after the witness has been granted use immunity, the court may find the witness in contempt.

(c) In any prosecution, action, suit, or proceeding based upon or arising out of this chapter, the commissioner may sign a certificate showing compliance or noncompliance with this chapter by any person. This shall constitute prima facie evidence of compliance or noncompliance with this chapter and shall be admissible in evidence in any action at law or in equity to enforce this chapter.

(d) If:

(1) a person disobeys any lawful:

(A) subpoena issued under this chapter; or

(B) order or demand requiring the production of any books, accounts, papers, records, documents, or other evidence or information as provided in this chapter; or

(2) a witness refuses to:

(A) appear when subpoenaed;

(B) testify to any matter about which the witness may be lawfully interrogated; or

(C) take or subscribe to any oath required by this chapter;

the circuit or superior court of the county in which the hearing, inquiry, or investigation in question is held, if demand is made or if, upon written petition, the production is ordered to be made, or the commissioner or a hearing officer appointed by the commissioner, shall compel compliance with the lawful requirements of the subpoena, order, or demand, compel the production of the necessary or required books, papers, records, documents, and other evidence and information, and compel any witness to attend in any Indiana county and to testify to any matter about which the witness may lawfully be interrogated, and to take or subscribe to any oath required.

(e) If a person fails, refuses, or neglects to comply with a court order under this section, the person shall be punished for contempt of court.

(f) The commissioner's authority to designate a multistate automated licensing system and repository under subsection (a)(16) is subject to the following:

(1) The commissioner may not require any person ~~exempt from licensure or registration~~ **that is not required to be licensed** under this chapter, or any employee or agent of ~~an exempt~~ **a person that is not required to be licensed under this chapter**, to:

(A) submit information to; or

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(B) participate in;
the multistate automated licensing system and repository.

(2) The commissioner may require a person required under this chapter to submit information to the multistate automated licensing system and repository to pay a processing fee considered reasonable by the commissioner.

SECTION 10. IC 23-2-5-16, AS AMENDED BY P.L.230-2007, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) Except as provided in subsection (b), a person who knowingly violates this chapter commits a ~~Class D~~ **Class C** felony.

(b) A person who knowingly violates this chapter commits a Class B felony if the person damaged by the violation is at least sixty (60) years of age.

~~(b)~~ (c) A person commits a Class C felony if the person knowingly makes or causes to be made:

- (1) in any document filed with or sent to the commissioner or the securities division; or
- (2) in any proceeding, investigation, or examination under this chapter;

any statement that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

SECTION 11. IC 23-2-5-18, AS AMENDED BY P.L.145-2008, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 18. (a) Each loan broker agreement shall be given an account number. Each person licensed **as a loan broker** or required to be licensed **as a loan broker** under this chapter shall keep and maintain the following records or their electronic equivalent:

- (1) A file for each borrower or proposed borrower that contains the following:
 - (A) The name and address of the borrower or any proposed borrower.
 - (B) A copy of the signed loan broker agreement.
 - (C) A copy of any other papers or instruments used in connection with the loan broker agreement and signed by the borrower or any proposed borrower.
 - (D) If a loan was obtained for the borrower, the name and address of the creditor.
 - (E) If a loan is accepted by the borrower, a copy of the loan agreement.
 - (F) The amount of the loan broker's fee that the borrower has paid. If there is an unpaid balance, the status of any collection

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efforts.

(2) All receipts from or for the account of borrowers or any proposed borrowers and all disbursements to or for the account of borrowers or any proposed borrowers, recorded so that the transactions are readily identifiable.

(3) A general ledger that shall be posted at least monthly, and a trial balance sheet and profit and loss statement prepared within thirty (30) days of the commissioner's request for the information.

(4) A sample of:

(A) all advertisements, pamphlets, circulars, letters, articles, or communications published in any newspaper, magazine, or periodical;

(B) scripts of any recording, radio, or television announcement; and

(C) any sales kits or literature;

to be used in solicitation of borrowers.

(5) A report that lists all residential mortgage loans, including pending loans and loans that were not closed, originated by the loan broker. The report required by this subdivision must be searchable by, or organized according to, the borrower's last name and must include the following information for each residential mortgage loan listed:

(A) The name and address of the borrower or potential borrower.

(B) The name of the creditor.

(C) The name of the mortgage loan originator.

(D) The loan amount.

(E) The status of the loan, including the date of closing or denial by the creditor.

(F) The interest rate for the loan.

The report required by this subdivision may be prepared or produced by or through the loan broker's loan origination software or other software used by the loan broker in its loan brokerage business.

(b) The records listed in subsection (a) shall be kept for a period of two (2) years in the ~~loan broker's principal~~ **office of the loan broker in which the loan was originated** and must be separate or readily identifiable from the records of any other business that is conducted in the office of the loan broker. **If the office in which any records are required to be kept under this subsection is located outside Indiana, the records must be:**

(1) made available at a location that is:

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(A) located in Indiana; and

(B) accessible to the securities division; or

(2) maintained electronically and made available to the securities division not later than ten (10) business days after a request by the securities division to inspect or examine the records.

(c) If a breach of the security of any records:

(1) maintained by a loan broker under this section; and

(2) containing the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers;

occurs, the loan broker is subject to the disclosure requirements under IC 24-4.9-3, unless the loan broker is exempt from the disclosure requirements under IC 24-4.9-3-4.

(d) A person who is ~~(1)~~ licensed or required to be licensed under this chapter or ~~(2)~~ registered or required to be registered under this chapter; may not dispose of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers without first shredding, incinerating, mutilating, erasing, or otherwise rendering the information illegible or unusable.

SECTION 12. IC 23-2-5-18.5, AS ADDED BY P.L.230-2007, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 18.5. Whenever a person licensed ~~or registered~~ under this chapter, or a person required to be licensed ~~or registered~~ under this chapter, has possession of funds belonging to others, including money received by or on behalf of a prospective borrower, the person licensed ~~or registered~~ under this chapter, or required to be licensed ~~or registered~~ under this chapter, shall:

(1) upon request of the prospective borrower, account for any funds handled for the prospective borrower;

(2) follow any reasonable and lawful instructions from the prospective borrower concerning the prospective borrower's funds; and

(3) return any unspent funds of the prospective borrower to the prospective borrower in a timely manner.

SECTION 13. IC 23-2-5-18.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 18.7. Each loan broker licensee shall submit, at such times as the commissioner may require, reports of condition to:**

(1) the commissioner; and

(2) the Nationwide Mortgage Licensing System and Registry.

A report required by this section shall be in such form and contain

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such information as the commissioner may require.

SECTION 14. IC 23-2-5-20, AS AMENDED BY P.L.145-2008, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 20. (a) A person shall not, in connection with a contract for the services of a loan broker, either directly or indirectly, do any of the following:

- (1) Employ any device, scheme, or artifice to defraud.
- (2) Make any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading.
- (3) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.
- (4) Collect or solicit any consideration, except a bona fide third party fee, in connection with a loan until the loan has been closed.
- (5) Receive any funds if the person knows that the funds were generated as a result of a fraudulent act.
- (6) File or cause to be filed with a county recorder any document that the person knows:
 - (A) contains:
 - (i) a misstatement; or
 - (ii) an untrue statement; of a material fact; or
 - (B) omits a statement of a material fact that is necessary to make the statements that are made, in the light of circumstances under which they are made, not misleading.
- (7) Knowingly release or disclose the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers, unless the personal information is used in an activity authorized by the borrower or prospective borrower under one (1) or more of the following circumstances:
 - (A) The personal information is:
 - (i) included on an application form or another form; or
 - (ii) transmitted as part of an application process or an enrollment process.
 - (B) The personal information is used to obtain a consumer report (as defined in IC 24-5-24-2) for an applicant for credit.
 - (C) The personal information is used to establish, amend, or terminate an account, a contract, or a policy, or to confirm the accuracy of the personal information.

However, personal information allowed to be disclosed under this subdivision may not be printed in whole or in part on a postcard

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or other mailer that does not require an envelope, or in a manner that makes the personal information visible on an envelope or a mailer without the envelope or mailer being opened.

(8) Engage in any reckless or negligent activity allowing the release or disclosure of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers. An activity described in this subdivision includes an action prohibited by section 18(d) of this chapter.

(9) Knowingly bribe, coerce, or intimidate another person to corrupt or improperly influence the independent judgment of a real estate appraiser with respect to the value of any real estate offered as security for a residential mortgage loan, as prohibited by section 9.1(d) of this chapter.

(10) Violate any of the following:

(A) The federal Truth in Lending Act (15 U.S.C. 1601 et seq.).

(B) The federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

(C) The federal Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.).

(D) Any other federal law or regulation concerning residential mortgage lending.

(b) A person who commits an act described in subsection (a) is subject to sections 10, 14, 15, and 16 of this chapter.

SECTION 15. IC 23-2-5-20.5, AS ADDED BY P.L.230-2007, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 20.5. (a) A person licensed or required to be licensed as a loan broker under this chapter shall not employ a person to ~~engage in origination activities~~ **act as a mortgage loan originator** unless the person is ~~registered~~ **licensed** as ~~an~~ **a mortgage loan** originator or a principal manager under this chapter. The ~~registration~~ **license** of ~~an~~ **a mortgage loan** originator or a principal manager is not effective during any period in which the **mortgage loan** originator or principal manager is not employed by a loan broker licensed under this chapter.

(b) A person licensed or required to be licensed as a loan broker under this chapter shall not operate any principal or branch office of a loan brokerage business without employing a ~~registered~~ **licensed** principal manager at that location.

(c) The licensed principal manager employed at a principal or branch office of a loan brokerage business shall supervise all employees at that location. If a licensed mortgage loan originator

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works from a location that is not a principal or branch office of a loan brokerage business, the mortgage loan originator shall be supervised by the principal manager employed at the principal or branch office at which the mortgage loan originator's loan files are sent.

(d) An individual that acts solely as a loan processor or underwriter shall not represent to the public through:

- (1) advertising; or
- (2) other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items;

that the individual may or will perform mortgage loan origination activities or otherwise act as a mortgage loan originator.

SECTION 16. IC 23-2-5-21, AS AMENDED BY P.L.230-2007, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 21. (a) A person applying for an initial license ~~or certificate of registration~~ must provide to the commissioner evidence that during the twenty-four (24) month period immediately preceding the application that the person completed at least ~~twenty-four (24)~~ **twenty (20)** hours of academic instruction, acceptable to the commissioner ~~related to the loan brokerage business~~, **and approved by the Nationwide Mortgage Licensing System and Registry. The education hours required under this subsection must include the following:**

- (1) ~~Three (3)~~ **Three (3)** hours of federal law and regulations concerning residential mortgage lending.
- (2) ~~Three (3)~~ **Three (3)** hours of ethics, including instruction on fraud, consumer protection, and fair lending practices.
- (3) ~~Two (2)~~ **Two (2)** hours of training concerning lending standards for nontraditional residential mortgage loan products.
- (4) ~~Two (2)~~ **Two (2)** hours of state law and rules concerning residential mortgage lending.

(b) To maintain a license ~~or registration~~ under this chapter, a person must provide to the commissioner evidence that the person has completed at least ~~six (6)~~ **eight (8)** hours of academic instruction that is ~~(1)~~ acceptable to the commissioner, and ~~(2)~~ **related to the loan brokerage business, approved by the Nationwide Mortgage Licensing System and Registry**, during each calendar year after the year in which the license ~~or registration~~ was initially issued. **The education hours required under this subsection must include the following:**

- (1) ~~Three (3)~~ **Three (3)** hours of federal law and regulations concerning

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residential mortgage lending.

(2) Two (2) hours of ethics, including instruction on fraud, consumer protection, and fair lending practices.

(3) Two (2) hours of training concerning lending standards for nontraditional residential mortgage loan products.

~~(b)~~ **(c)** In determining the acceptability of academic instruction the commissioner shall give consideration to approval of a licensee's internal academic instruction programs completed by employees.

~~(c)~~ **(d)** In determining the acceptability of an education course, the commissioner may require a fee, in an amount prescribed by the commissioner by rule or order, for the commissioner's review of the course.

SECTION 17. IC 23-2-5-22, AS AMENDED BY P.L.145-2008, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 22. (a) An appeal may be taken by:

- (1) any person whose application for an initial or a renewal license under this chapter is granted or denied, from any final order of the commissioner concerning the application;
 - (2) any applicant for initial or renewed ~~registration~~ **licensure** as a principal manager or ~~an~~ **a mortgage loan** originator, from any final order of the commissioner affecting the application;
 - (3) any person against whom a civil penalty is imposed under section 14(a) of this chapter, from the final order of the commissioner imposing the civil penalty; or
 - (4) any person who is named as a respondent, from any final order issued by the commissioner under section 10 or 11 of this chapter;
- to the Marion circuit court or to the circuit or superior court of the county where the person taking the appeal resides or maintains a place of business.

(b) Not later than twenty (20) days after the entry of the order, the commissioner shall be served with:

- (1) a written notice of the appeal stating the court to which the appeal will be taken and the grounds upon which a reversal of the final order is sought;
- (2) a demand in writing from the appellant for a certified transcript of the record and of all papers on file in the commissioner's office affecting or relating to the order; and
- (3) a bond in the penal sum of five hundred dollars (\$500) to the state of Indiana with sufficient surety to be approved by the commissioner, conditioned upon the faithful prosecution of the appeal to final judgment and the payment of all costs that are adjudged against the appellant.

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(c) Not later than ten (10) days after the commissioner is served with the items listed in subsection (b), the commissioner shall make, certify, and deliver to the appellant the transcript, and the appellant shall, not later than five (5) days after the date the appellant receives the transcript, file the transcript and a copy of the notice of appeal with the clerk of the court. The notice of appeal serves as the appellant's complaint. The commissioner may appear and file any motion or pleading and form the issue. The cause shall be entered on the trial calendar for trial de novo and given precedence over all matters pending in the court.

(d) The court shall receive and consider any pertinent oral or written evidence concerning the order of the commissioner from which the appeal is taken. If the order of the commissioner is reversed, the court shall in its mandate specifically direct the commissioner as to the commissioner's further action in the matter. The commissioner is not barred from revoking or altering the order for any proper cause that accrues or is discovered after the order is entered. If the order is affirmed, the appellant is not barred after thirty (30) days from the date the order is affirmed from filing a new application if the application is not otherwise barred or limited. During the pendency of the appeal, the order from which the appeal is taken is not suspended but remains in effect unless otherwise ordered by the court. An appeal may be taken from the judgment of the court on the same terms and conditions as an appeal is taken in civil actions.

SECTION 18. IC 23-2-5-23, AS ADDED BY P.L.230-2007, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 23. ~~Any document~~ **A loan broker agreement that is** delivered or required to be delivered by a person licensed or required to be licensed **under this chapter** to a borrower or prospective borrower must contain:

- (1) the license number of the loan broker; and
 - (2) the ~~registration~~ **license** number of each:
 - (A) **mortgage loan** originator; or
 - (B) principal manager;
- who had contact with the file.

SECTION 19. IC 23-2-5-24 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 24. **In the securities divisions' investigative, examination, and regulatory activities related to licensees under this article, the securities division may cooperate with the Indiana department of financial institutions in the regulation of a licensee that conducts:**

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(1) business under this article; and

(2) business that requires licensure under IC 24-4.4.

SECTION 20. IC 23-2-5-25 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 25. Subject to IC 5-14-3, the commissioner is required to regularly report:**

(1) violations of this chapter; and

(2) enforcement actions and other relevant information; to the Nationwide Mortgage Licensing System and Registry.

SECTION 21. IC 23-2-5-26 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 26. The commissioner shall establish a process by which a mortgage loan originator may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the commissioner.**

SECTION 22. IC 23-19-4-11, AS ADDED BY P.L.27-2007, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 11. (a) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), a rule adopted or order issued under this article may establish minimum financial requirements for broker-dealers registered or required to be registered under this article and investment advisers registered or required to be registered under this article.**

(b) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a(b)), a broker-dealer registered or required to be registered under this article and an investment adviser registered or required to be registered under this article shall file such financial reports as are required by a rule adopted or order issued under this article. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a):

(1) a broker-dealer registered or required to be registered under this article and an investment adviser registered or required to be registered under this article shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule adopted or order issued under this article;

(2) broker-dealer records required to be maintained under

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subdivision (1) may be maintained in any form of data storage acceptable under Section 17(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(a)) if they are readily accessible to the commissioner; and

(3) investment adviser records required to be maintained under subdivision (1) may be maintained in any form of data storage required by rule adopted or order issued under this article.

(d) The records of a broker-dealer registered or required to be registered under this article and of an investment adviser registered or required to be registered under this article are subject to such reasonable periodic, special, or other audits or inspections by a representative of the commissioner, within or outside this state, as the commissioner considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The commissioner may copy, and remove for audit or inspection copies of, all records the commissioner reasonably considers necessary or appropriate to conduct the audit or inspection. The commissioner may assess a reasonable charge for conducting an audit or inspection under this subsection.

(e) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), a rule adopted or order issued under this article may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount not to exceed fifty thousand dollars (\$50,000). The commissioner may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this article whose net capital exceeds, or of an investment adviser registered under this article whose minimum financial requirements exceed, the amounts required by rule or order under this article. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in IC 23-19-5-9(g).

(f) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an

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investment adviser or a federal covered investment adviser. A rule adopted or order issued under this article may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

(g) With respect to an investment adviser registered or required to be registered under this article, a rule adopted or order issued under this article may require that information or other records be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

(h) A rule adopted or order issued under this article may require an individual registered under section 2 or 4 of this chapter to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this article may require continuing education for an individual registered under section 4 of this chapter.

(i) The commissioner may annually select as many as twenty-five percent (25%) of all Indiana home and branch offices of registered broker-dealers for completion of compliance reports. Each broker-dealer office that is selected shall file its compliance report according to rules adopted by the commissioner under this article not ~~more later than ninety (90)~~ **forty-five (45)** days after being notified of selection under this subsection. No charges or other examination fees may be assessed against a registered broker-dealer as a result of the examination of a compliance report filed under this subsection unless the examination results in an investigation or examination made under IC 23-19-6-2(a).

SECTION 23. IC 23-19-5-8, AS ADDED BY P.L.27-2007, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) A person who knowingly violates this article, or a rule adopted under this article, except section 4 of this chapter or the notice filing requirements of IC 23-19-3-2 or IC 23-19-4-5, commits a Class C felony.

(b) A person who knowingly violates section 1 of this chapter commits a Class B felony if the person harmed, defrauded, misled, or deceived by the violation is at least sixty (60) years of age.

(c) A person who knowingly violates section 1 of this chapter:

(1) while using or taking advantage of; or

(2) in connection with;

a relationship that is based on religious affiliation or worship

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commits a Class B felony.

~~(b)~~ (d) It is the duty of a prosecuting attorney, as well as of the attorney general, to assist the commissioner upon the commissioner's request in the prosecution to final judgment of a violation of the penal provisions of this article. If the commissioner determines that an action based on the securities division's investigations is meritorious:

(1) the commissioner or a designee empowered by the commissioner shall refer the facts drawn from the investigation to the prosecuting attorney of the judicial circuit in which the crime may have been committed;

(2) the commissioner and the securities division shall assist the prosecuting attorney in prosecuting an action under this section, which may include a securities division attorney serving as a special deputy prosecutor appointed by the prosecuting attorney;

(3) a prosecuting attorney to whom facts concerning fraud are referred under subdivision (1) may refer the matter to the attorney general;

(4) if a matter has been referred to the attorney general under subdivision (3), the attorney general may:

(A) file an information in a court with jurisdiction over the matter in the county in which the offense is alleged to have been committed; and

(B) prosecute the alleged offense; and

(5) if a matter has been referred to the attorney general under subdivision (3), the commissioner and the securities division shall assist the attorney general in prosecuting an action under this section, which may include a securities division attorney serving as a special deputy attorney general appointed by the attorney general.

~~(e)~~ (e) This article does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

SECTION 24. IC 23-19-6-4, AS ADDED BY P.L.27-2007, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this article or a rule adopted or order issued under this article or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this article or a rule adopted or order issued under this article, the commissioner may:

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- (1) investigate and may issue, with or without a prior hearing, orders and notices as the commissioner determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the legal rate of interest, directed to a person who has violated this article or a rule or order under this article;
- (2) issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under IC 23-19-4-1(b)(1)(D) or IC 23-19-4-1(b)(1)(F) or an investment adviser under IC 23-19-4-3(b)(1)(C); or
- (3) issue an order under IC 23-19-2-4.

(b) An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement whether the commissioner will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within fifteen (15) days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the commissioner within forty-five (45) days after the date of service of the order, the order, which may include a civil penalty or costs of the investigation if a civil penalty or costs were sought in the statement accompanying the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c) If a hearing is requested or ordered under subsection (b), the hearing must be held ~~within~~ **not later than** fifteen (15) **business** days ~~of after receipt if the original order issued by the commissioner was~~ **a summary suspension, summary revocation, or denial of a license and not later than forty-five (45) business days after receipt for all other orders.** A final order may not be issued unless the commissioner makes findings of fact and conclusions of law in a record. The final order may make final, vacate, or modify the order issued under subsection (a).

(d) In a final order under subsection (c), the commissioner may impose a civil penalty up to ten thousand dollars (\$10,000) per violation. Penalties collected under this section shall be deposited in the securities division enforcement account established under section

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1 of this chapter.

(e) In a final order, the commissioner may charge the cost of an investigation or proceeding for a violation of this article or a rule adopted or order issued under this article.

(f) If a petition for judicial review of a final order is not filed in accordance with section 9 of this chapter, the commissioner may file a certified copy of the final order with the clerk of a court with jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(g) If a person does not comply with an order under this section, the commissioner may petition a court with jurisdiction to enforce the order. The court may not require the commissioner to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not greater than twenty thousand dollars (\$20,000) for each violation and may grant any other relief the court determines is just and proper in the circumstances.

(h) The commissioner shall send a certified copy of every final order that suspends or revokes a person's registration under this article, or that orders a person who is not registered under this article to cease and desist from violating this article, to the insurance commissioner appointed under IC 27-1-1-2. The insurance commissioner shall act in accordance with IC 27-1-15.6-29.5.

SECTION 25. IC 23-2-5-19 IS REPEALED [EFFECTIVE JULY 1, 2009].

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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HEA 1646 — Concur+

